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NOV 18 2008

CLERK SUPREME COURT

**RE: Church's Formal Request to Invalidate Proposition 8**

Dear Friends:

The Ecumenical Catholic Church as a Christian denomination, as well as I personally, join the throngs of local governments, civil rights and religious organizations, and millions of citizens in asking you to refuse to implement Proposition 8 and to continue practicing marriage equality in California by granting equivalent licenses and rights to same-sex couples as those granted to different-sex couples. We base this request on several factors.

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**Proposition 8 inserts a false statement into the California Constitution.**

"Only marriage between a man and a woman is valid or recognized in California."

The statement is theologically false because validity of a marriage is determined by

the commitment of the couple and the blessing of God. While various religions and denominations, including my own, have canons and policies that assess a marriage's validity, they are not dependent upon the court, legislature, constitution, or voters. There are many valid marriages not recognized by the government, and there are many marriages recognized by the government that various denominational regulations would not consider valid. But to categorically make a statement that appears to apply to very religious organization within the state is simply false.

Furthermore, recognition in California is up to the people as individuals. No one can tell me or anyone else whose marriage I recognize, either as a clergy person or simply as a human being. I recognize the gay marriages conducted in San Francisco prior to the supreme court ruling. I recognize the legally valid marriages conducted between June and November 2008. I will continue to recognize gay marriages performed in California after November, whether or not they have a civil marriage license. If a man married another man tomorrow in church, and came to me later with a civil marriage license to marry a woman, I would refuse to do the marriage because it would be bigamy.

Thus the statement Proposition 8 is attempting to insert into the state constitution is false in and of itself. If it said "legally valid" and used "by" rather than "in," it might be factual, although it would still be disgusting, discriminatory, and unconstitutional.

**Proposition 8 makes the constitution self-contradictory.** The supreme court has already declared that the California Constitution requires marriage equality. Proposition 8 does not remove any language from the constitution. It merely inserts a single sentence that contradicts the entirety of the existing document. It thus creates a logical inconsistency that cannot be resolved, which puts in doubt the value and meaning of the entire constitution.

The proposition is logically akin to passing a law that says "Caucasians can own slaves in California" without repealing the existing laws against slavery. Just because 52% of the people voted to allow slave ownership and wrote it that sentence into the constitution would not make slavery legal, because the constitution still prohibits slavery. The sentence of Proposition 8 only makes the constitution logically inconsistent.

**Proposition 8 violates freedom of religion.** The canon law of the Ecumenical Catholic Church states in Canon III, Article 5, "This church shall hold no regard for a person's race, color, gender, sexual orientation or preference, nationality, or socioeconomic class." It further states in Canon XX, Article 14, "No distinction shall be made in this denomination or any of its constituent organizations or authorities between heterosexual and homosexual marriages." This has been the case since 1987, and limiting marriage to different-sex couples has always violated our religious freedom. States without marriage equality continue to violate our religious freedom.

Likewise, the civil rights of gay people have always been violated by unjust marriage laws. The fact that these violations did exist in California and continue to exist elsewhere is not an excuse to move backward. The struggle for religious freedom and civil rights must always progress forward, not backward. The fact that churches, organizations, or individuals

did not have the financial or legal resources or the political clout to push forward in the past does not justify a return to past discrimination.

It is a sad reality that our denomination has conducted marriages for over twenty years in many different states while some of the marriage couples (the same-sex ones) had to rely on a complex and inadequate array of civil unions, domestic partnerships, powers of attorney, and other attempts to complete only part of what other couples (the different-sex ones) received through one simple piece of paper and paying a nominal fee to the state.

California, like Massachusetts and Connecticut, has finally eliminated this grave injustice. We cannot go back just because a narrow margin of the population was misled by deceitful campaign ads based on fear, paranoia, and bigotry. It is appalling that it takes 67% of the people just to approve a tax for a mass transit system, but 52% are even considered close to taking away fundamental rights from millions of Californians. Surely there is something backwards in that logic.

The religious community is far from united on Proposition 8. The “yes” campaign was well funded and supported within some religions and denominations. The “yes” people often cloaked their arguments in “moral” terms, and one of their most offensive lies was the claim that Proposition 8 protects religious freedom while in fact it does the opposite. (How eliminating an option can possibly protect freedom baffles the foundations of logic.) The “no” campaign probably failed in its lack of concerted outreach to religious communities and its discussion of gay marriages as only a *civil* right but not claiming it is a *religious* right. But we should never continue oppressing a group of oppressed people simply because of flaws in their defense strategy against a well-funded and dishonestly run offense against their rights. That would be like letting the student body of a middle school vote on whether the jocks should be allowed to bully the nerds. Basic rights are just not something that can be voted away.

Most of the mainline churches – the Episcopal Church, the Evangelical Lutheran Church in America (ELCA), the United Methodist Church (UMC), the Presbyterian Church in the USA (PCUSA), and many others – have the issue of same-sex marriage first and foremost in their ecclesiastical courts and national conventions. The United Church of Christ – the denomination of both the Pilgrims and Barack Obama – allows its clergy to perform same-sex weddings and has come out strongly against Proposition 8. The Episcopalian bishops in California issued a joint statement in opposition. Hundreds of clergy have performed many of the thousands of legal gay marriages in California, and countless more are willing to do so when they are presented the opportunity.

Because truth and justice are always moving forward, it is only a matter of time before most of the mainline Christian churches approve same-sex marriage within their denominations. As that happens, Proposition 8 will be in the position of violating the religious freedom of an ever-growing number of Californians, in addition to violating the civil rights of California’s millions of gay and lesbian citizens.

**The word is important.** Civil unions and domestic partnerships, and even “holy unions,” cannot convey the emotional component of marriage. The state can confer rights and the Church can convey blessings. But only society can convey the emotional benefits associated

with “marriage.” They are wrapped up in the word, not the license or the liturgy. When two men or two women tell their family and friends they are getting married, they are finally seen on par with their straight siblings. When Bob tells his Aunt Margie that he is getting married, and she doesn’t instantly assume he is marrying a woman, equality will arrive. That equality cannot arrive if Bob has to talk about domestic partnership, civil union, or holy union.

That emotional component – which is conveyed almost entirely by the word *marriage* itself – is what strengthens the family. The protection of the government and the blessings of God are obviously important, but it is the emotional support of relatives and friends that strengthens a family the most. Using legalistic terms (“civil union,” etc.) rather than the common vernacular (“marriage”) inhibits this recognition of the relationship. This is why our denomination, unlike many others, has always forbidden the term “holy union” and insisted that same-sex marriages be called “marriage” within the church.

It is uplifting to see the advancement of the gay community in this realization. The awakened awareness is evidence that same-sex marriages are just like different-sex marriages and that gay people are just like straight people – individuals trying to live good lives, sometimes in teams with another.

In the 1990’s our church actively supported the nascent attempt to legalize same-sex marriage. The main gay lobby groups couldn’t be bothered. It is as if the floodgate of realization finally burst open when the heterosexual mayor of San Francisco pushed forward with what he knew in his heart – failure to allow same-sex marriage is discrimination, no matter how you look at it.

I believe that all dark clouds do have a silver lining. In the abominable passage of Proposition 8, the silver lining has been the community outrage all over the state, and even the rest of the nation and world. Suddenly tens or hundreds of thousands are marching for their rights – civil rights that are equally important as those fought for by racial minorities.

The tide has turned, and marriage equality will soon be by the law of the land – in California, in America, and ultimately in the world. Just as we now look back 500 years and see how foolish the Church was to denounce the solar system’s heliocentricity, or look back 160 years in amazement to see people actually fighting over whether one race could enslave another, so we will look back – hopefully in only 50 years – and see how wrong and foolish it was for either the Church or government to denounce marriage equality.

There was one truth in the “yes on 8” campaign: His Honor the mayor is correct at a simply logical level, “Whether you like it or not ...”

We pray the supreme court will invalidate Proposition 8 as an improper attempt to revise our constitution, a revision that would destroy both its logical consistency and its firm commitment to civil rights. And if they take too long in doing so, hopefully the governor and legislature will simultaneously take steps to invalidate this hateful proposition, perhaps even a legitimately processed constitutional revision that directly inserts marriage equality unequivocally into the constitution in a manner that no one can doubt.

Meanwhile, please do not put California’s millions of gay people through an emotional roller coaster on this ride toward truth. It is not fair. It is not just. It violates our constitution. Please continue to issue same-sex marriage licenses and register these marriages. Please

refuse to implement Proposition 8. Let the new slogan become, "Prop 8 is not valid or recognized in or by California."

Grace and Peace,



Most Rev. Mark S. Shirilau, Ph.D.  
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cc: California Supreme Court Justices  
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and cited as deemed helpful*

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